

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JOAN McCANTS,
ESTATE OF JERMAINE CLAYBROOKS,
BIOLOGICAL MINOR CHILDREN

J.J.C., by and through KEYANNA ALLEN,
as parent and guardian, and J.D.C., by and
through MARKIA S. LOVE, as parent and
guardian,

Plaintiffs,

v.

Case No. 17-cv-1507-pp

CITY OF MILWAUKEE,
POLICE CHIEF EDWARD FLYNN,
MILWAUKEE POLICE OFFICERS JOHN SCHOTT,
MARTEZ BALL, AND JOHN IVY, WEST ALLIS
POLICE OFFICERS TODD KURTZ, and
P.O. DANIEL DITTORRICE, and SPECIAL AGENT
JAMES KRUEGER, Drug Enforcement Agency,

Defendants.

**ORDER GRANTING ATTORNEY WALTER W. STERN, III'S MOTION TO
WITHDRAW AS COUNSEL FOR PLAINTIFF KEYANNA ALLEN ONLY (DKT.
NO. 2); GRANTING THE VOLUNTARY DISMISSAL WITHOUT PREJUDICE AS
TO PLAINTIFFS MCCANTS, ESTATE OF JERMAINE CLAYBROOKS, AND
MARKIA LOVE (DKT. NO. 5); AND ORDERING THAT, BY THE END OF THE
DAY ON FRIDAY, JANUARY 5, 2018, PLAINTIFF KEYANNA ALLEN NOTIFY
THE COURT WHETHER SHE OBJECTS TO THE COURT DISMISSING HER
CASE WITHOUT PREJUDICE**

On November 1, 2017, Attorney Walter W. Stern, III filed a complaint on behalf of plaintiffs Joan McCants, minor J.J.C. by his/her next friend Keyanna Allen, minor J.D.C. by his/her next friend Markia S. Love, and the Estate of Jermaine Claybrooks. Dkt. No. 1. Only a week or so later, on November 10,

2017, Stern filed a motion seeking to withdraw from representing Keyanna Allen, one of the four named plaintiffs. Dkt. No. 2. Another week later, plaintiff Allen filed a letter, notifying the court that she did not object to Stern's motion, and explaining why she no longer wanted Stern to represent her. Dkt. No. 3. Because plaintiff Allen does not object to Attorney Stern's motion, the court will grant it, and will allow Attorney Stern to withdraw from representing plaintiff Keyanna Allen only.

On November 22, 2017, Attorney Stern—purporting to act on behalf of all plaintiffs, despite the fact that he had asked to withdraw from representing one of them—filed a motion to voluntarily dismiss the complaint. Dkt. No. 5. The motion indicated that the complaint “incorrectly and erroneously named a personal administrator who had not yet been appointed by the Milwaukee County Probate Court[.]” Id. Because the defendants have not answered the complaint, Attorney Stern needed only to file a notice of dismissal under Rule 41(a)(1)(A)(i) to have the complaint automatically dismissed as to the plaintiffs he represents; he does not need a court order.

The court provides an order, however, because Attorney Stern cannot act on behalf of plaintiff Keyanna Allen. He asked to withdraw from representing her before he filed the voluntary dismissal notice, and she agreed that she did not want him representing her. It is possible that Ms. Allen has no objection to her federal case being dismissed; it sounds as if the state court needs to decide who will act as the administrator of the decedent's estate before anyone can (or

should) file a federal lawsuit. But because Stern no longer represents Ms. Allen, the court needs to hear that from Ms. Allen.

The court **GRANTS** Attorney Walter W. Stern, III's motion to withdraw from representing plaintiff Keyanna Allen. Dkt. No. 2.

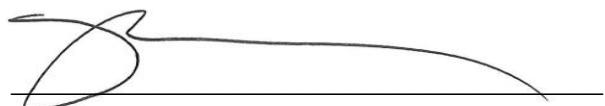
The court **ORDERS** that, under Fed. R. Civ. P. 41(a)(1)(A)(i), the cases brought by plaintiffs McCants, J.D.C. through Markia S. Love, and the Estate of Jermaine Claybrooks are **DISMISSED WITHOUT PREJUDICE**.

The court **ORDERS** that, by the end of the day on **Friday, January 5, 2018**, unrepresented plaintiff Keyanna Allen shall notify the court if she objects to the court dismissing her case without prejudice (which means that she may re-file the federal case at a later date, subject to any statutes of limitation).

If plaintiff Allen does not respond by the end of the day on January 5, 2018, the court may assume that she does not wish to prosecute the case and may dismiss it.

Dated in Milwaukee, Wisconsin this 12th day of December, 2017.

BY THE COURT:



HON. PAMELA PEPPER
United States District Judge